

Remarks:

Reconsideration and allowance are respectfully requested. Claims 1-10, 12, 13 and 15-21 are pending in the application and stand rejected. Claims 11 and 14 have been canceled. No new matter has been added.

§103 Rejection:

The Examiner states that “[c]laims 1-10, 12, 13 and 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat # 5,810,422 to Corder et al in view of US Pat # 7,029,053 to Heller et al.” However, this rejection is listed under the heading “***Claim Rejections – 35 USC §103***” and includes a first reference in view of a second reference. Applicant believes that the Examiner meant to reject claims 1-10, 12, 13 and 15-21 under ***35 U.S.C. §103(a)*** as being ***unpatentable over*** U.S. Patent No. 5,810,422 to Corder et al. in view of U.S. Patent No. 7,029,053 to Heller et al. and Applicant is responding as such.

With respect to claim 1, the Examiner states that “Corder et al discloses a cabriolet vehicle (Figure 1) with a body including a windshield frame (72) and a roof (10) provided with a flexible cover (20) supported by a transverse support (24), which includes a front roof area (22) and a rear area (26), wherein the front roof area (22) is moveable between an open state and a closed state such that the front roof area (22) is storable in a body recess (see Figure 4), which is bounded on a rear by an edge of the body in the open state (See Figure 7A) in the same orientation as in the closed state, characterized by the fact that the rear roof area (26) is disposed rearward relative to the front roof area (22) and the front roof area (22) and the rear roof area (26) are separated by a separation joint when the roof is in a closed state; wherein a rear edge of the front roof area (22), at the separation joint is adapted to the curvature of the edge of the body bounding the rear of the body recess when the roof is in the closed state; wherein a front edge of the front roof area (22) is connected to the windshield flame [sic] (72) and a rear edge of the front roof area (22) is connected to the rear roof area (26) when the roof is in the closed state See Figure 8).”

However, with respect to Claim 1, the Examiner concedes that “Corder et al fails to disclose wherein the transverse support (24) locks to the rear edge of the front roof area (22) when the roof is in the closed state.” The Examiner further states that “Heller et al teaches a

locking device for interlocking first and second panels in the closed position" and that "[i]t would have been obvious to one with ordinary skill in the art at the time the invention was made to use the locking mechanism as taught by Heller et al on the device of Corder et al in order to prevent water from leaking between the panel and to hold the panels together in case of a crash." Applicant respectfully disagrees.

A proper rejection under 35 USC §103(a) requires that the Examiner establish *prima facie* obviousness. As recited in the MPEP, "[t]he Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." MPEP §2142.

The key to supporting any rejection under 35 U.S.C. §103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. §103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). MPEP §2142.

For a rejection under 35 U.S.C. § 103(a) to be proper, the Examiner must establish an "apparent reason" to modify the reference or to combine reference teachings. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1395-97 (2007). The Examiner has failed to show where the prior art provides an "apparent reason" to modify the reference or combine the teachings.

Corder et al. teaches a convertible top (10) including a pliable cover 20, a rigid front panel (22), a rigid rear panel (24), a back light panel (26) and a linkage assembly (18). The pliable cover (20) is stretched over the rigid panels 22 and 24. *See Col. 2, Lines 61-66*. The front and rear panel members (22) and (24) are coupled to the vehicle (12) by a pair of identical balance links (38) and main links (40). One end of both links (38) and (40) is pivotally coupled to the front panel member (22) at pivot points (42) and (44), while the opposite ends of these links (38) and (40) are pivotally coupled to the vehicle at pivot points (46) and (48). The rear panel member (24) is pivotably coupled to intermediate portions (50) and (52) of both the

balance links (38) and the main links (40) at pivot points (54) and (56) via a reinforcing member (58). This reinforcing member (58) extends transversely across the vehicle (12) and supports the rear panel (24) as shown in FIGS. 5A-7A. *See Col. 4, Lines 10-23.*

As the convertible top (10) is pivoted rearward from its raised operative position, the rear panel (24) *folds* downwardly away from the pliable covering (20), since the pliable covering (20) is affixed to the front panel (22) and not the rear panel (24). *See Col. 4, Lines 29-31 and Figures 5-7.* Further, as best illustrated in Figure 6, the reinforcing member (58) for the rear panel member (24) is pivotally coupled to an intermediate portion (52) of the main link at (56). *See Col. 4, Lines 28-33 and 42-50.* In other words, the rear panel (24), supported by the reinforcing member (58), is *pivottally connected* to the front panel (22) at the pivotable coupling (56).

Heller et al. teaches a locking device for *interlocking* first and second roof parts in a closed position and is further described as being suitable for any roof with several roof or frame parts which are *interlocked* to one and other or to the body. *See Abstract and Col. 5, Lines 5-10.* Further, the roof 1 taught by Heller et al. includes a front roof part 3, a middle roof part 4 and a rear roof part 5, interlocked to one another via the locking device 10, which is a “laterally interlocking device,” that keeps the roof 1 interlocked in a closed position. *See Col. 2, Lines 50-53, Col. 3, Lines 24-25 and Figure 1.* As such, the locking device taught by Heller et al. is designed to laterally interlock roof panels that abut one another at their respective corresponding ends.

As the front panel (22) and rear panel (24) taught by Corder et al. are pivotally connected to one another, modifying Corder et al. to include the interlocking device taught by Heller et al. would not prevent water from leaking between the panels nor hold the panels together in case of a crash, as suggested by the Examiner.

As discussed above, the interlocking device taught by Heller et al. is designed to *laterally* interlock roof panels that abut one another at their respective corresponding ends, whereas the rear panel (24) taught by Corder et al. is pivotally connected to the front panel (22) on the underside of the front panel (22) and at a position spaced away from the end of the front panel (22). As such, in the closed position, the roof panels of Corder et al. do not abut one another at corresponding respective ends but instead, as clearly illustrated in Figures 5 and 6, a portion of the front panel (22) overlaps a portion of the rear panel (24) when the roof (1) is in the closed position and water intrusion would not be an issue.

Further, also as discussed above, the front panel (22) and the rear panel (24) taught by

Corder et al. are already *pivots* connected to one another and, as such, there would be no "apparent reason" to modify Corder et al. to include an additional interlocking device as taught by Heller et al. to "hold the panels together in case of a crash," as suggested by the Examiner, as the additional interlocking would merely add cost and weight to the vehicle and be redundant.

As such, there would be no "apparent reason" to either modify Corder et al. to include the interlocking device of Heller et al. or to combine their teachings to either prevent water from leaking between the panels or to hold the panels together in case of a crash.

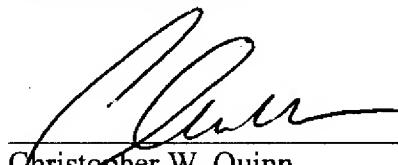
Accordingly, for at least this reason, the claimed invention is patentable over Corder et al. in view of Heller et al. and withdrawal of the rejection is respectfully requested.

### Conclusion

All rejections and objections having been addressed, it is therefore respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited.

Respectfully submitted,

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